



NEW AND LEASED CAR LEMON LAW

Last Reviewed: 17 May 2010

DISCLAIMER: This handout has been produced by the office of the Staff Judge Advocate, ESC/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

The Massachusetts Lemon Law protects consumers who have serious defects in their new cars. The law defines a lemon as a new or leased motor vehicle that has a defect which substantially impairs the use, market value, or safety of the vehicle, and which has not been repaired after a reasonable number of attempts. (M.G.L. c. 90, §7N1/2)

If your new or leased vehicle has a substantial defect that still exists or recurs after a reasonable number of repair attempts, then you may have the right to a refund or replacement vehicle. Keep in mind that not all car problems are serious enough to qualify under the Lemon Law.

Vehicles Covered By The Lemon Law:

Any new car, motorcycle, van or truck bought in Massachusetts from a new-car dealer for personal or family purposes is covered by the Lemon Law for the "term of protection" of one year or 15,000 miles of use from the date of original delivery, whichever comes first. The law also covers vehicles that are resold during the one year or 15,000-mile term-of-protection, and new vehicles leased after July 1, 1997.

Vehicles Not Covered By The Lemon Law:

- auto-homes;
- vehicles built primarily for off-road use;
- vehicles used primarily for business purposes;
- vehicles with defects caused by owner negligence, accidents, vandalism, or unauthorized repair of the vehicle by a person other than the manufacturer or authorized agent; or
- vehicles leased before July 1, 1997.

Term of Protection:

The term of protection is one year or 15,000 miles of use from the date of original delivery, whichever comes first. This means that the defects you are complaining about and the required repair attempts must occur during this period. However, the manufacturer's final repair attempt can take place after the term of protection.

Substantial Impairment:

DISCLAIMER: This handout has been produced by the office of the Staff Judge Advocate, ESC/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

The Lemon Law only covers serious defects- those which substantially impair the use, market-value or safety of the vehicle. The law does not list the defects which are considered substantial. You must be able to demonstrate specifically how the use, safety or market value of your vehicle is substantially impaired by the defect. For example, to prove market value impairment, you must show that your vehicle is worth at least 10 percent less than it would be without the defect. Although a defect may be annoying, it is not necessarily substantial.

Repair Attempts

The Lemon Law gives the manufacturer, its agent or authorized dealer a "reasonable number of attempts" to repair the substantial defect. This standard is met if, within the term of protection (1 year or 15,000 miles):

- a repair is attempted 3 or more times for the same substantial defect, and the problem continues or recurs within the term of protection; or
- repair attempts for any substantial defect or combination of defects total 15 or more business days, not necessarily all at one time.

Be sure to keep complete and accurate records of all contacts with the manufacturer and dealer, and all receipts. You have a right to a dated, itemized bill for any repair work, including warranty repair work, under the Attorney General's Motor Vehicle Regulations (940 CMR 5.00). Examine the bills to be sure the problem you complained about is listed.

The defect must continue or recur after a reasonable number of repair attempts and still substantially impair your vehicle before you can take the next step in the Lemon Law process.

Final Repair Attempt:

If the substantial defect continues or recurs after the manufacturer or authorized dealer has made a reasonable number of repair attempts to repair the defect, you must give the manufacturer (not the dealer) one final repair opportunity, not to exceed seven business days, to fix the defect. This seven-day period begins when the manufacturer knows or should know that 3 repair attempts or 15 business days out of service limits have been met or exceeded. This is usually the date the manufacturer receives a final repair opportunity letter from you. You may notify the manufacturer of the final opportunity even after the one year or 15,000-mile term of protection ends.

You should send notification of the final opportunity to repair by certified mail, return receipt requested, to the manufacturer's regional office. (See sample below.) Notifying the manufacturer directly by mail and keeping copies of your letters is the best way to document that the manufacturer was provided a final repair opportunity.

At the end of the 7 business days, you may pick up your vehicle. The manufacturer may choose not to use this final opportunity to attempt repair. If after the seven business days, the substantial defect has not been repaired, or has been repaired and recurs, you have the

DISCLAIMER: This handout has been produced by the office of the Staff Judge Advocate, ESC/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

right to a refund or replacement under the Lemon Law. If the manufacturer does not comply voluntarily, you may request an arbitration hearing.

Replacement

If your vehicle qualifies as a lemon and the manufacturer offers you a replacement vehicle, it must be one that is acceptable to you. You are free to reject a replacement vehicle and demand a refund. However, you cannot reject a refund and demand a replacement. If you are given a replacement vehicle under the Lemon Law, a new one year or 15,000 mile term of protection starts from the date of delivery of that replacement vehicle.

If the manufacturer issues a replacement vehicle, it must reimburse you for the following costs:

- transfer of registration fees;
- sales tax resulting from the replacement; and
- unreimbursed towing or rental charges resulting from the defect.

Refund

New Vehicles:

If you choose to get a refund, you will receive the full contract price of the vehicle including all credits and allowances for any trade-in vehicle, but a reasonable allowance for use will be deducted.

The use allowance depends upon the vehicle's purchase price and mileage.

For *vehicles other than motorcycles*, use this formula:

contract price / 100,000 x mileage (contract price divided by 100,000 multiplied by mileage)

For *motorcycles* the formula is:

contract price / 25,000 x mileage (contract price divided by 25,000 multiplied by mileage)

NOTE: You may keep your vehicle until you have been given a refund or an acceptable replacement vehicle. Miles driven during this time will be included when calculating the reasonable allowance for use.

If the manufacturer issues a refund, it must reimburse you for the following costs:

- sales tax;
- registration fees;
- finance charges;
- dealer-added options;
- unreimbursed towing or rental charges resulting from the defect;
- unreimbursed, unused portion of an extended warranty;
- unreimbursed, unused portion of credit insurance;
- defect-related incidental costs.

You also are entitled to a pro-rated excise tax refund from your city or town hall. Under the Lemon Law, you will not be reimbursed for attorney's fees, lost wages, or other consequential damages.

Leased Vehicles:

If you choose to get a refund, you will receive the total lease payments you made under the agreement. A reasonable allowance for use will be deducted based on the following formula: total payments made / 100,000 x mileage (total payments made divided by 100,000 multiplied by mileage)

Asserting Your Rights

If the manufacturer will not refund your money or replace the vehicle, you have several options. You may seek mediation, arbitration, or file suit in court.

Mediation:

This allows both parties to reach a mutually agreeable resolution with the help of a facilitator. Mediation is voluntary, requiring both parties' consent. Consumer Affairs offers a face-to-face mediation program for Lemon Law disputes; you may also apply for mediation through your local consumer group.

Arbitration:

This is an inexpensive and informal way to resolve your complaint. In arbitration, the consumer and the manufacturer present evidence about the condition of the vehicle to an impartial person or persons. There are two types of arbitration: state-run and manufacturer-sponsored.

Court:

You have the right to proceed to court if you have met the Lemon Law's requirements and the manufacturer refuses to refund your money or replace your vehicle with one that is acceptable to you, or if you are not satisfied with your arbitration decision. Failure to comply with the Lemon Law is an unfair and deceptive act under the Massachusetts Consumer Protection Act, c. 93A, which may entitle you to double or treble damages, plus court costs and reasonable attorney's fees. If you are considering court action, you should consult an attorney. You or your attorney must begin by sending the manufacturer a 30-Day Demand Letter.

For further information visit the Massachusetts Office of Consumer Affairs at www.mass.gov/oca